



## Chapter 365-195 WAC – Preliminary Draft

### GROWTH MANAGEMENT ACT—BEST AVAILABLE SCIENCE

#### ***The Role of GMA Rules***

*The rules advise local governments on GMA compliance. The Growth Management Hearings Board must consider these rules when interpreting the GMA and determining compliance. Local governments must consider the minimum guidelines when designating critical areas and resource lands. Local governments may use the procedural criteria to guide their implementation of the GMA. The primary audiences for the rules are local governments with statutory obligations under the GMA, members of the public, state agencies, the Growth Management Hearings Board, Courts, Tribes, or other public entities who participate in the local planning process.*

*Commerce released a [project scope](#) on October 7, 2021. Our authority to make changes to the WAC is limited, and potential changes primarily reflect the following criteria:*

- *New Legislation*
- *New Case Law*
- *Clarification of Existing Guidance Consistent with Underlying GMA Requirements*

*Commerce is releasing a preliminary draft to encourage early feedback on proposed changes to our administrative rules. This allows us to work with stakeholders early in the rulemaking process to address your concerns and incorporate feedback before initiating the formal adoption process. Please submit written comments to [gmarulemaking@commerce.wa.gov](mailto:gmarulemaking@commerce.wa.gov) by January 19<sup>th</sup>, 2022.*

*This document provides an overview of the proposed changes. Click here for a full copy of the recommended amendments to [Chapter 365-195 WAC](#).*

## Contents

<b>WAC 365-195-900</b>	Background and purpose.....	3
<b>WAC 365-195-905</b>	Criteria for determining which information is the "best available science." .....	3
<b>WAC 365-195-910</b>	Criteria for obtaining the best available science .....	4
<b>WAC 365-195-920</b>	Criteria for addressing inadequate scientific information .....	5

<p><b>WAC 365-195-900</b> Background and purpose</p>	<p><b>Source of Change:</b> Agency Recommendation</p>
<p><b>Proposed Change:</b> Commerce is making minor, non-substantive changes to this section to reflect the new periodic update schedule and the name of our agency.</p>	
<p><b>WAC 365-195-900 Background and purpose.</b> (1) Counties and cities planning under RCW 36.70A.040 are subject to continuing review and evaluation of their comprehensive land use plan and development regulations. <del>Every five years</del><u>Periodically,</u> they must take action to review and revise their plans and regulations, if needed, to ensure they comply with the requirements of <del>the Growth Management Act.</del> RCW 36.70A.130. ***</p>	
<p>*** (4) These rules are adopted under the authority of RCW 36.70A.190 (4)(b) which requires the department of <del>community, trade, and economic development</del><u>commerce</u> (department) to adopt rules to assist counties and cities to comply with the goals and requirements of the Growth Management Act.</p>	

<p><b>WAC 365-195-905</b> Criteria for determining which information is the "best available science."</p>	<p><b>Source of Change:</b> Agency Recommendation</p>
<p><b>Proposed Change:</b> Commerce works with resource agencies to identify best available science (BAS) sources, which can change over time. Commerce does not maintain a list of BAS, and refers local governments to agencies with expertise.</p> <p>Some cities and counties do not conduct a BAS review when updating their critical areas regulations. The proposed change reinforces that cities and counties should conduct a BAS review to ensure their regulations protect critical areas.</p>	
<p><b>WAC 365-195-905 Criteria for determining which information is the "best available science."</b> *** (2) Counties and cities may use information that local, state or federal natural resource agencies have determined represents the best available science consistent with criteria set out in WAC 365-195-900 through 365-195-925. The department will <del>make available a list of resources that state agencies have identified as meeting the criteria for best available science pursuant to this chapter.</del><u>work with state agencies to identify resources that meet the criteria for best available science.</u> Such information should be reviewed for local applicability. ***</p>	

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(3) The responsibility for including the best available science in the development and implementation of critical areas policies or regulations rests with the legislative authority of the county or city. Cities and counties should conduct a best available science review when updating critical area regulations. When feasible, counties and cities should consult with a qualified scientific expert or team of qualified scientific experts to identify scientific information, determine the best available science, and assess its applicability to the relevant critical areas. The scientific expert or experts may rely on their professional judgment based on experience and training, but they should use the criteria set out in WAC 365-195-900 through 365-195-925 and any technical guidance provided by the department. Use of these criteria also should guide counties and cities that lack the assistance of a qualified expert or experts, but these criteria are not intended to be a substitute for an assessment and recommendation by a qualified scientific expert or team of experts.

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**WAC 365-195-910**

Criteria for obtaining the best available science

**Source of Change:** Agency Recommendation

**Proposed Change:** Commerce works with resource agencies to identify best available science (BAS) sources, which can change over time. Commerce does not maintain a list of BAS, and refers local governments to agencies with expertise.

**WAC 365-195-910 Criteria for obtaining the best available science.**

(1) Consultation with state and federal natural resources agencies and tribes can provide a quick and cost-effective way to develop scientific information and recommendations. State natural resource agencies provide numerous guidance documents and model ordinances that incorporate the agencies' assessments of the best available science. The department can provide technical assistance in obtaining such information from state natural resources agencies, developing model GMA-compliant critical areas policies and development regulations, and related subjects. ~~The department will make available to interested parties a current list of the best available science determined to be consistent with criteria set out in WAC 365-195-905 as identified by state or federal natural resource agencies for critical areas.~~

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**WAC 365-195-920**

Criteria for addressing inadequate scientific information

**Source of Change:** Agency Recommendation

**Proposed Change:** The BAS rule provides guidance to local governments on implementing requirements to include BAS in developing and adopting critical areas regulations. Multiple agencies encouraged us to update the guidance on monitoring and adaptive management. The approach to monitoring and adaptive management in this chapter is obsolete. New recommendations reflect Commerce's 2018 guidance and provide a rationale for establishing and maintaining feedback loop systems. Monitoring and adaptive management will help ensure ongoing implementation is fair, transparent, efficient and effective.

**WAC 365-195-920 Criteria for addressing inadequate scientific information.**

(1) Where there is an absence of valid scientific information or incomplete scientific information relating to a county's or city's critical areas, leading to uncertainty about which development and land uses could lead to harm of critical areas or uncertainty about the risk to critical area function of permitting development, counties and cities should use the following approach:

~~(1)(a)~~ A "precautionary or a no risk approach," in which development and land use activities are strictly limited until the uncertainty is sufficiently resolved; and

~~(2)(b)~~ As an interim approach, an effective adaptive management program that relies on scientific methods to evaluate how well regulatory and nonregulatory actions achieve their objectives.

Management, policy, and regulatory actions are treated as experiments that are purposefully monitored and evaluated to determine whether they are effective and, if not, how they should be improved to increase their effectiveness. An adaptive management program is a formal and deliberate scientific approach to taking action and obtaining information in the face of uncertainty.

To effectively implement an adaptive management program, counties and cities should be willing to:

~~(a)(i)~~ Address funding for the research component of the adaptive management program;

~~(b)(ii)~~ Change course based on the results and interpretation of new information that resolves uncertainties; and

~~(c)(iii)~~ Commit to the appropriate time frame and scale necessary to reliably evaluate regulatory and nonregulatory actions affecting critical areas protection and anadromous fisheries.

(2) Ongoing permit implementation monitoring and adaptive management.

(a) In addition to the use of formal scientific approaches to monitoring and adaptive management program as an interim approach as described above, the department recommends counties and cities develop and maintain ongoing monitoring and adaptive management procedures to ensure implementation of critical area regulations is efficient and effective. Counties and cities should consult department guidance documents for information.

(b) Steps in developing permit implementation monitoring and adaptive management programs include:

(i) Determining the reasons for monitoring;

(ii) Establishing key objectives and study questions;

(iii) Designing the monitoring program;

(iv) Determining the monitoring time frame; and

(v) Evaluating results and making recommendations.